IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.133 OF 2004

Mr.Ramrao Dnyanu Patil and anr. ...Appellants

Vs.

The State of Maharashtra & Ors. ...Respondents

CORAM: A.S.OKA, J.

DATED: AUGUST 16, 2004.

P.C.:

1. Heard the Counsel appearing for the parties. The Second Appeal is filed by the original Plaintiffs. The challenge in the suit filed by the Plaintiffs is to an Award made under Section 11 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act). In view of the law laid down by the Apex Court, the Courts below have taken a view that the Civil Court has no jurisdiction to entertain the suit filed by the Appellants.

2. The learned Counsel for the Appellants Shri Borkar relied upon the Judgment and Order dated 18th November 1994 passed by this Court in Writ Petition No.5323 of 1988 filed by the Appellants herein. This Court observed thus,

> . It is contended on behalf of the petitioners that in the present case notification under Section 6 of the Land Acquisition Act was published on 28th August 1986. The declaration was made on 13th August 1986. It is further

contended that under Section 11A of the Act, the Award has not been made although period of two years has elapsed from the date of publication of the declaration and, therefore, the acquisition proceedings are liable to be quashed. No reply has been filed on behalf of the respondents although the respondents have been duly served. It is also further contended that the petitioners are prepared to surrender alternate land for acquisition.

. As regards the first contention, if the Award has not been made within the stipulated period as contemplated under Section 11A of the Act, then the notification under Section 6 of the Act shall stand quashed. In case, the Award has been passed within the stipulated period, it would be open to the petitioner to make representation to the Land Acquisition Officer and offer alternate land which, according to the petitioner, is suitable. The land Acquisition Officer will also consider the representation.

3. Shri Borkar for the Appellants relied upon the second paragraph of the Judgment of the Division Bench. He submitted that whether the Award is made within the stipulated period provided under Section 11A of the Act is a question of fact which can be decided only in a Civil suit. He submitted that the order passed by the Division Bench of this Court is self-operative and it is stated that once it is established that the Award is not made within the statutory period, notification under Section 6 of the Act shall stand quashed. He, therefore, submitted that limited relief could have been granted by the Trial Court after examining whether the Award is made within the stipulated time. He submitted that the said issue cannot be decided under Article 226 of Constitution of India.

4. I have considered the submissions made by the learned Counsel for the Appellant. From the law laid down by the Apex Court in the case of Laxmi Chand and others Vs. Gram Panchyat, Kararia and others reported in (1996) 7 Supreme Court Cases page No.218, it is very clear that the Apex Court has held that the scheme of the said Act of 1894 is complete in itself and thereby the jurisdiction of the Civil Court to take cognizance of the cases arising under the said Act, by necessary implication, stood barred. The Apex Court has further held that the Civil Court is thereby devoid of jurisidction to give declaration of the invalidity of the procedure contemplated under the Act and the only remedy of aggrieved person is to approach the constitutional Court. In view of the law laid down by the Apex court, the Civil Court has no jurisdiction to decide the question whether the Award was made within the time prescribed by law.

5. In view of this position, no fault can be found with the Judgments and Decrees passed by the Courts below when a view was taken that the Civil Court has no jurisdiction to entertain and try the suit filed by the Appellants. The Appellate Court observed that the remedy of approaching this Court by invoking jurisdiction under Article 226 of Constitution of India is available to the Appellants. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.